

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated September 15, 2010. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1, 3-7, 9 and 11 are pending in the Application. Claims 9 and 11 are amended to be provided in independent form.

In the Office Action, claims 1, 3-7, 9 and 11 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement.

This rejection encompasses:

(1) The drawings objection under 37 CFR 1.83(a) in which the Examiner argues the following:

i) the drawings do not show at least one switching element and especially one that has an "electrode" in the active layer as is set forth by at least claim 1. As shown in the original disclosure and original Figures 1-6 the active layer 11 is totally removed in the final product (Figures 5 and 6) and also from the original disclosure and original drawings the active layer 11 is totally removed before any apertures like 14 are formed in the oxidic layer 12. Thus the electrode material formed in the aperture 14 that extends on the side opposite base layer 13 cannot and is not the first electrode.

In response the Applicants point out that the active layer 11 is prominently and unchangeably displayed in each of FIGs. 1-4. In FIGs. 5 and 6 the layer is shown diminished yet it is clearly visible and identifiable by its distinct shading. Identical shading is carried throughout FIGs. 1-6 for each of the respective layers. Nowhere within the four corners of the specification, and especially not in the drawings, is there even a hint of the active layer 11 being totally removed. Lines 6-8 at page 8 of the original specification, state the following:

Subsequently, or after various intermediate steps, superfluous regions of the active layer 11 and any layer on top of it are removed by wet-chemical or dry etching so as to obtain at least one island-like structure.

Thus, it is respectfully submitted that the specification supports the recitation of "an active layer of semiconductor material disposed on and in contact with the second side of the substrate layer for forming a second electrode", as recited in claim 1. It is further noted that in accordance with claim 1, a base layer forms a first electrode. As with regard to "the active layer including at least one switching element", as recited in claim 1, support is found at page 7, starting at line 25 of the original specification.

ii) Newly proposed Figure 7 has the "lower" electrode 50 listed in the proposed amendment to the specification as "another electrode". There is no indication that "another electrode" is the "first electrode" as set forth by the claims.

In response the Applicants point out that the amendment to the specification reads as follows: "The display pixel includes a capacitor 46 with one electrode and another electrode and a dielectric formed from the insulating layer 12 including a high-k area." It is respectfully submitted that it is immaterial which of the "one electrode and another electrode" are referred to in the claims as first or second.

iii) The capacitor (claim 5). There is no showing of the capacitor.

In response the Applicants point out that that it is well known to those skilled in the art that capacitors are formed when two conductive plates are separated by an insulator. That is the structure formed by active, insulating, and base layers 11, 12, and 13, which are now indicated in FIG. 6 with numeral 46 but which have always been shown in the figure. It is respectfully submitted that FIGs. 5 and 6 have always shown this structure and this structure has always been described in the original specification, for example on page 4,

lines 1-4. Further, original claim 5 also included the objected to subject matter so it is respectfully submitted, that the labeling of the capacitor in the figures can not constitute new matter.

iv) There is still no array of switching elements shown (claim 7).

In response the Applicants point out that FIG. 6 does illustrate an array of switching elements. It is claimed and explained in the specification, "the active layer including at least one switching element", as in recited claim 1. Further, FIG. 6 illustrates three independent iterations of the active layer. Therefore, since each iteration includes at least one, three evenly spaced iterations of the active layer must necessarily include an orderly arrangement (the definition of an array) of switching elements.

Accordingly, the applicants maintain that the proposed drawings filed on June 28, 2010 do not introduce new matter and an indication to that effect is respectfully requested.

This rejection under 35 U.S.C. §112, first paragraph also encompasses:

(2) The amendment filed on June 28, 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure.

In response the Applicants point out that the original FIGs. 5 and 6 as filed showed, as would be appreciated by a person of ordinary skill in the art and as was correctly described in the originally submitted specification, incorrect shading of apertures 14, which was corrected by the amendment filed on June 28, 2010. In that amendment, the shading was changed to solid black color to indicate areas where metal is provided, as originally described. Further, as discussed above, all claimed layers are shown throughout FIGs. 1-6 using consistent shading as provided in the originally submitted application. Accordingly, in

FIGs. 1-6 base layer 13 is shown shaded with condensed dots, insulating layer 12 is shown shaded with spaced dots, and active layer 11 is shown shaded with inclined solid lines. Further, FIGs. 2-6 show cross hatch shading for a coating 3 and FIGs. 3-6 show solid inclined lines alternating with broken inclined lines shading for a carrier substrate 30. The shading remains constant for the areas it represents in all the Figures. As argued above, active layer 11 is not removed, instead, as described in the specification and indicated by the shading, is shown as the three islands having the inclined solid lines shading shown in FIGs. 5 and 6.

Furthermore, other than the shading of the apertures, nothing else has been altered in the drawings from those originally submitted. The numbering, e.g., 40A, 40B, 44, and 46 was added at the request of the Examiner to indicate claimed features. As is common in patent prosecution, in the specification and figures the same reference numerals identify the same items throughout the Figures. This includes sides 1 and 2 of the substrate, which remained the same even in FIG. 5.

Accordingly, the rejection under 35 U.S.C. §112, first paragraph is respectfully traversed. Applicants respectfully request that the Examiner review the arguments accompanying the drawings submitted in the amendment on June 28, 2010, as well as these provided above, approve the replacement drawings, and withdraw the drawing objection and this rejection.

In the Office Action, claims 1 and 9 are rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,798,679 to Matsumoto ("Matsumoto"). Claims 1, 3-7, 9 and 11 are rejected

under 35 U.S.C. §103(a) over U.S. Patent No. 6,724,794 to Dudoff ("Dudoff") in view of U.S. Patent No. 4,729,061 to Brown ("Brown"). These rejections are respectfully traversed.

In light of the fact that the Examiner did not provide a Response to the Arguments (which arguments the Applicants feel clearly overcome the prior art references) and in light of the fact that the explanation of the rejections of the claims under 35 U.S.C. §102 and §103 is word for word identical to that in the previous Office Action, even including reference numerals no longer in the application, the Examiner is respectfully requested to review the arguments submitted in the response to the previous Office Action and reconsider the position taken in this Office Action.

MPEP 707.07(f) in a section entitled "Answer All Material Traversed" states (emphasis added):

In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.

Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

Yet, as stated above, Applicants' arguments were not addressed. In fact, the substance of the rejection is word-for-word the same as previously provided including reference designations that no longer exist in the application. Clearly, since the references

are being utilized for the same reason as previously utilized, Applicants' arguments should have been addressed in the Office Action.

Accordingly, it is respectfully submitted that the Office Action is improper and either a Notice of Allowance should be issued or a new Office Action addressing those arguments should be issued, resetting the time for Applicants response so that the Applicants are given an opportunity to address any issues raised.

It is respectfully maintained that:

1. The Applicants consistently have made bona fide efforts to comply with the Examiners requests for Drawings and the Specification amendments. On page 2 of the Office Action, it is indicated that Appellants future attempts at addressing the concerns raised in the Office Action will probably not be viewed as bona-fide attempts at addressing those objections/rejections. It is not clear how the prior and current attempts can be viewed as not being bona-fide attempts as the Applicants have submitted numerous drawing changes and changes to the specification to address the concerns raised. In each case, the Applicants have made bona-fide attempts to address the concerns raised. It is respectfully requested that the current amendment also be viewed as a bona-fide attempt.

2. The device of claim 1 is not anticipated or made obvious by the teachings of Matsumoto, Dudoff, and Brown as explained in detail in the amendment submitted on June 28, 2010, which explanation is omitted herein for sake of clarity but which arguments are incorporated into this amendment as if set out in its entirety and are requested to be reviewed by the Examiner herein.

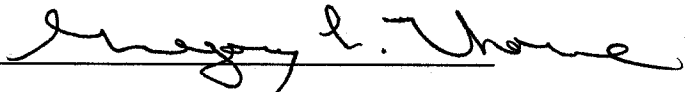
3. Independent claims 1, 9 and 11 are patentable as explained in detail in the June 28, 2010 amendment regarding claim 1, which remarks now similarly apply to claims 9 and 11 provided herein in independent form, and notice to this effect is earnestly solicited.

4. Claims 3-7 respectively depend from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

In addition, Applicants deny any statement, position, or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in
condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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